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International cooperation in combating transnational crime

Existing international legal instruments, recommendations and other documents addressing corruption

Report of the Secretary-General

Summary

The present report has been prepared pursuant to resolution 55/61 of 4 December 2000, in which the General Assembly recognized the desirability of an effective international legal instrument against corruption.

In resolution 55/61, the General Assembly requested the Secretary-General to prepare a report analysing all relevant international instruments, other documents and recommendations addressing corruption, and requested the Commission on Crime Prevention and Criminal Justice, at its tenth session, to review and assess the report and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

In addition, the Assembly requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare, on the basis of the report of the Secretary-General and of the recommendations of the Commission at its tenth session, draft terms of reference for the negotiation of the future legal instrument against corruption.

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Contents

		Paragraphs	Page
I.	Introduction	1–7	4
II.	Overview of international legal instruments addressing corruption	8–33	4
	A. United Nations	10–12	4
	B. Council of Europe	13–16	5
	C. European Union	17–27	5
	D. Organization of American States	28–29	6
	E. Organisation for Economic Cooperation and Development	30–33	7
III.	Comparative analysis of the main provisions of the international legal instruments addressing corruption	34–127	7
	A. Use of terms (or definitions)	37–42	7
	B. Criminalization	43–54	8
	C. Liability of legal persons	55–60	10
	D. Measures and sanctions	61–65	10
	E. Prevention	66–70	11
	F. Jurisdiction	71–80	12
	G. International cooperation	81–95	13
	H. Monitoring of implementation	96–109	15
	I. Other measures	110–127	16
IV.	Recommendations and other documents addressing corruption	128–191	18
	A. United Nations	128–148	18
	1. International Code of Conduct for Public Officials	128–130	18
	2. United Nations Declaration against Corruption and Bribery in International Commercial Transactions	131–135	19
	3. Conclusions and recommendations of the Expert Group Meeting on Corruption and its Financial Channels, Paris, 30 March-1 April 1999	136–140	19
	4. Action against corruption (General Assembly resolution 54/128)	141–143	20
	5. Report of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders	144–148	20
	B. Other intergovernmental organizations	149–162	21
	1. Council of Europe	149–159	21
	2. Organisation for Economic Cooperation and Development	160–162	22

C. Other entities ... 163–191 22
1. Basel Committee on Banking Supervision ... 163–166 22
2. Financial Action Task Force on Money Laundering ... 167–171 23
3. Global Coalition for Africa ... 172–180 23
4. Global Forum on Fighting Corruption ... 181-188 24
5. Group of Eight ... 189–191 25
V. The question of illegally transferred funds and the repatriation of such funds to the countries of origin ... 192–208 26
A. Practical issues ... 197–198 26
B. Political issues ... 199–200 26
C. Legal issues ... 201–208 27
VI. Conclusions ... 209–214 27
Annexes
I. Existing international legal instruments addressing corruption ... 33
II. Recommendations and other documents addressing corruption ... 37

I. Introduction

1. In its resolution 55/61 of 4 December 2000, the General Assembly recognized the desirability of an effective international legal instrument against corruption, and decided to start the development of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention.

2. The General Assembly requested the Secretary-General to prepare a report analysing all relevant international instruments, other documents and recommendations addressing corruption, and requested the Commission on Crime Prevention and Criminal Justice, at its tenth session, to review and assess the report and, on that basis, to provide recommendations and guidance as to future work on the development of a legal instrument against corruption.

3. In addition, the Assembly requested the Secretary-General to convene an intergovernmental open-ended expert group to examine and prepare, on the basis of the report of the Secretary-General and of the recommendations of the Commission at its tenth session, draft terms of reference for the negotiation of the future legal instrument against corruption.

4. In its resolution 55/188 of 20 December 2000, entitled "Preventing and combating corrupt practices and illegal transfer of funds and repatriation of such funds to the countries of origin", the General Assembly invited the intergovernmental open-ended expert group convened in accordance with resolution 55/61 to examine on the same basis the question of illegally transferred funds and the repatriation of such funds to their countries of origin.

5. Pursuant to the request contained in resolution 55/61, a draft of the present report was presented to the inter-sessional meeting of the Commission on 16 February 2001 in order to allow member States to provide comments to the Commission prior to its tenth session.

6. The report has also benefited from consultations with relevant intergovernmental organizations, whose inputs are reflected in the text.

7. In order to facilitate the work of both the Commission and the intergovernmental open-ended expert group, which will prepare the draft terms of reference for the negotiation of the future legal instrument against corruption, the Secretariat has prepared two tables outlining the main components of the existing international legal instruments and of the recommendations and other documents addressing corruption (see annexes I and II, respectively).

II. Overview of international legal instruments addressing corruption

8. During the past decade several legal instruments addressing corruption have been negotiated under the auspices of different intergovernmental organizations. Most of them have not yet entered into force.[1]

9. After a brief overview of those instruments, a comparative analysis of their main provisions is provided.

A. United Nations

10. In its resolution 54/128 of 17 December 1999, the General Assembly directed the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime to incorporate into the draft convention measures against corruption linked to organized crime, including provisions regarding the sanctioning of acts of corruption involving public officials. The United Nations Convention against Transnational Organized Crime (the "United Nations Convention"), adopted by the Assembly in its resolution 55/25 of 15 November 2000 and opened for signature from 12 to 15 December 2000 in Palermo, Italy,[2] includes several provisions related to the phenomenon of corruption.

11. In particular, the United Nations Convention foresees the criminalization of corruption of public officials; the adoption of such measures as may be necessary to establish as a criminal offence the participation as an accomplice in such an offence; the liability of legal persons corrupting public officials; the provision of measures to prevent, detect and punish the corruption of public officials; the promotion of the concept of "integrity" of public officials; and the provision of adequate independence to competent authorities in the prevention, detection and punishment of corruption of public officials.

12. The Convention will enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession.

B. Council of Europe

13. In November 1998, the Committee of Ministers of the Council of Europe adopted the text of the Criminal Law Convention on Corruption (the "COE Criminal Law Convention") and decided to open it for signature, by the member States of the Council of Europe and the non-member States that had participated in its negotiation, on 27 January 1999.[3]

14. The Convention will enter into force after the deposit of fourteen instruments of ratification.[4]

15. The Civil Law Convention on Corruption of the Council of Europe (the "COE Civil Law Convention") is the first attempt to define common international rules in the field of civil law and corruption. It requires each party to provide in its domestic law for effective remedies for persons who have suffered damage as a result of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.

16. The Convention was opened for signature by member States and non-member States that had participated in its negotiation as well as the European Community on 4 November 1999. It will enter into force after the deposit of the fourteenth instrument of ratification.[5]

C. European Union

17. The Convention drawn up on the basis of Article K.3 of the Treaty on European Union (EU) on the protection of the European Communities' financial interests (the "EU Convention on PFI") constitutes the first agreement under Title VI (provisions on police and judicial cooperation in criminal matters) of the EU Treaty dealing with fraud affecting the European Communities' budget. The Convention aims at protecting the European Communities' financial interests by calling for the criminal prosecution of fraudulent conduct injuring those interests and requires, for that purpose, the adoption of a common definition of such conduct.

18. The Convention was adopted by the EU Council on 26 July 1995. According to article 11, the Convention shall be subject to adoption by the member States in accordance with their respective constitutional requirements. Member States shall notify the Secretary-General of the Council of the completion of their constitutional requirements for adopting the Convention, which shall enter into force 90 days after the notification by the last member State to fulfil that formality.[6]

19. The Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on PFI (the "First Protocol to the EU Convention on PFI") was developed as an additional instrument to complement the Convention and to reinforce the protection of the Communities' financial interests. The Protocol is aimed primarily at acts of corruption that involve national and Community officials and damage, or are likely to damage, the Communities' financial interests.

20. The Protocol was adopted by the EU Council on 27 September 1996. According to article 9, the Protocol shall be subject to adoption by the member States in accordance with their respective constitutional requirements. Member States shall notify the Secretary-General of the Council of the completion of the procedures required under their respective constitutional rules for adopting the Protocol, which shall enter into force 90 days after notification has been given by the State that, being an EU member at the time of adoption by the Council of the act drawing up the Protocol, is the last to fulfil that formality. If the Convention has not entered into force on that date, the Protocol shall enter into force on the date on which the Convention enters into force.[7]

21. The Second Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests (the "Second Protocol to the EU Convention on PFI") addresses in particular the issues of liability of legal persons, confiscation, money-laundering and cooperation between member States and the European Commission for the purpose of protecting the European Communities' financial interests and protecting personal data related thereto.

22. The Second Protocol was adopted by the Council on 19 June 1997. According to article 16, the Protocol shall be subject to adoption by the member States in

accordance with their respective constitutional requirements. Member States shall notify the Secretary-General of the Council of the completion of the procedures required under their respective constitutional rules for adopting the Protocol, which shall enter into force 90 days after notification by the State that, being an EU member on the date of the adoption by the Council of the act drawing up this Protocol, is the last to fulfil that formality. If the Convention has not entered into force on that date, this Protocol shall enter into force on the date on which the Convention enters into force.[8]

23. The Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of member States of the European Union (the "EU Convention on the fight against corruption") was drawn up in order to ensure that all corrupt conduct involving Community officials or member States' officials, and not just that which is linked to fraud against the Communities' financial interests, is criminalized. Before the Convention was drawn up, the criminal law in most member States did not extend to the criminalization of conduct aimed at corrupting officials of other member States, even where it took place in their own territory or at the instigation of one of their own nationals. As that situation became increasingly intolerable, the Council was in the process of drawing up the First Protocol to the EU Convention on PFI. However, owing to the subject matter of the Convention, the Protocol could only require member States to punish conduct relating to fraud against the financial interests of the European Communities. While based largely on the provisions and definitions on which delegations had agreed in the earlier discussions on the Protocol, the Convention on the fight against corruption involving officials of the European Communities or officials of EU member States is a free-standing international legal instrument addressing all corrupt conduct involving officials of the Community or of member States.[9]

24. On 26 May 1997, the EU Council adopted the Convention. According to article 13, the Convention shall be subject to adoption by the member States in accordance with their respective constitutional requirements. Member States shall notify the Secretary-General of the EU Council of the completion of the procedures laid down by their respective constitutional requirements for adopting the Convention, which shall enter into force 90 days after the notification by the last member State to fulfil that formality.[10]

25. The Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on corruption in the private sector ("EU Joint Action"), is directed in particular at combating corruption in the private sector at the international level.

26. According to article 10, the EU Joint Action shall enter into force on the date of its publication in the *Official Journal* (i.e. 31 December 1998). On the issue of implementation, article 8 of the Joint Action establishes that each member State shall, within two years after the entry into force of the Joint Action, bring forward appropriate proposals to implement it for consideration by the competent authorities with a view to their adoption. The Council then will assess, on the basis of appropriate information, the fulfilment by member States of their obligations under the Joint Action within three years after its entry into force.

27. A declaration annexed to the EU Joint Action considers that instrument a first step and states that, in the light of the assessment to be carried out by the Council by the end of 2001, further measures will be taken at a later stage. Consequently, the Commission will examine carefully the assessment of the implementation of the Joint Action with a view to deciding whether new initiatives are to be taken within its competencies under the Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts of 1997, in order to ensure a comprehensive approach for combating private sector corruption.

D. Organization of American States

28. The Inter-American Convention against Corruption (the "OAS Convention") was approved at a Special Inter-American Conference and opened for signature in Caracas on 29 March 1996. The purposes of the Convention are to promote and strengthen the development by each of the States parties of mechanisms needed to prevent, detect, punish and eradicate corruption and to promote, facilitate and

regulate cooperation among the States parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

29. The OAS Convention entered into force on 6 March 1997. Article XXV provided for it to enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.[11]

E. Organisation for Economic Cooperation and Development

30. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the "OECD Convention") was signed on 17 December 1997 and was prepared by a group of 34 countries: the 29 member countries of the Organisation for Economic Cooperation and Development (OECD) and five non-members (Argentina, Brazil, Bulgaria, Chile and Slovakia).[12]

31. The OECD Convention provides a framework to criminalize corruption in international business transactions. Parties to the Convention pledge to punish those accused of bribing officials of foreign countries, including officials in countries that are not parties to the Convention, for the purpose of obtaining or retaining international business. The Convention seeks to ensure a functional equivalence among the measures taken by the parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of a party's legal system.[13]

32. The OECD Convention entered into force on 15 February 1999. The agreement between participating countries provided for the Convention to enter into force on the sixtieth day following the date upon which 5 of the 10 countries that have the 10 largest shares of OECD exports, representing at least 60 per cent of the combined total exports of those 10 countries, had deposited their instruments of acceptance, approval or ratification.[14]

33. The Convention is open to accession by any country that becomes a full participant in the OECD Working Group on Bribery in International Business Transactions and is willing and able to assume its obligations. States that wish to adhere must gain admission to the OECD Working Group. Members of the Working Group also subscribe to the commitments listed in the Revised Recommendation on Combating Bribery in International Business Transactions and in the Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials; they further need to participate in the monitoring mechanism managed by the Working Group.

III. Comparative analysis of the main provisions of the international legal instruments addressing corruption

34. The present section intends to provide a comparative analysis of the main provisions of the international legal instruments presented in section II. As those instruments share a similar structure, the analysis has been undertaken according to the following common topics: use of terms; criminalization; liability of legal persons; measures and sanctions; prevention; jurisdiction; international cooperation; monitoring of implementation; and other measures.

35. As a preliminary and general comment, it can be observed that one of the main differences among the instruments discussed here is represented by the identification of the acts that States parties are required to criminalize under each instrument. Some instruments, like the OECD Convention, have opted for a narrow approach calling only for the criminalization of the so-called "active bribery" of foreign public officials;[15] while others, like the COE Criminal Law Convention, cover a broad range of corrupt practices.

36. Because of the specific nature and scope of the COE Civil Law Convention, that instrument is covered in a separate part of this section.

A. Use of terms (or definitions)

37. Most of the legal instruments contain a definition of the term "public official". However, in that connection, they present some differences.

38. According to the OAS Convention, a "public official" (or "government official" or "public servant") means "any official or employee of the State or its

agencies, including those who have been selected, appointed or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy" (art. I). The OAS Convention also refers to the concept of "public function", which means "any temporary or permanent, paid or honorary activity, performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy" (art. I). The reference to "public function" is also present in the definition of public officials provided by the OECD Convention (see below).

39. The concept of "public service" appears in the definition of public officials provided by the United Nations Convention, which states that a "public official" shall mean "a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function" (art. 8).

40. The COE Criminal Law Convention refers to the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law (art. 1). Likewise, both the First Protocol to the EU Convention on PFI and the EU Convention on the fight against corruption, in defining the term "national official", refer to the definition of "official" or "public officer" in the national law of the member State in which the person in question performs that function for the purposes of application of the criminal law of that member State.

41. The OECD Convention, on the other hand, tries to give an autonomous definition of public official. According to that Convention, in fact, the term "foreign public official" means "any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization" (art. 1).

42. The COE Criminal Law Convention, together with the Second Protocol to the EU Convention on PFI and the EU Joint Action, are the only legal instruments to contain a definition of "legal persons". The three instruments share a similar definition. According to their texts (see art. 1 in all three instruments), in fact, "legal person" shall mean "any entity having such status under the applicable national law, except for States or other public bodies in the exercise of state authority and for public international organizations".

B. Criminalization

43. The main provision of the United Nations Convention relating to criminalization is contained in article 8, which states in paragraph 1:

"1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

"(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

"(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

44. Each State party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with article 8. In addition, each State party shall consider adopting such legislative and other measures as may be necessary to criminalize the conduct described above involving a foreign public official or an international civil servant, as well as the criminalization of other forms of corruption.

45. The United Nations Convention also states that an offence established, inter alia, in accordance with article 8 shall be established in the domestic law of each State party independently of the transnational nature or the involvement of an organized criminal group (art. 34).

46. The COE Criminal Law Convention aims at the coordinated criminalization of a large number of corrupt practices: (a) active and passive bribery of domestic and foreign public officials;[16] (b) active and passive bribery of national and foreign parliamentarians and of members of international parliamentary assemblies;[17] (c) active and passive bribery of officials

of international organizations; (d) active and passive bribery of judges and officials of international courts; (e) active and passive trading in influence; (f) money-laundering of proceeds from corruption offences; and (g) account offences connected with corruption offences (arts. 2-14).

47. In addition, it is foreseen that each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences aiding or abetting the commission of any of the criminal offences established in accordance with the Convention (art. 15).

48. It must be underlined that, besides the EU Joint Action, which specifically targets corruption in the private sector, the COE Criminal Law Convention is the only one of the instruments under review that criminalizes active and passive bribery in the private sector (arts. 7 and 8).[18]

49. According to the EU Convention on PFI, each member State shall criminalize "fraud"[19] affecting the European Communities' financial interests (art. 1). The First Protocol to the EU Convention on PFI criminalizes the passive and active corruption[20] of a Community official or national official that damages or is likely to damage the European Communities' financial interests (arts. 2 and 3), while the Second Protocol criminalizes money-laundering (art. 2).[21]

50. The EU Convention on the fight against corruption requires member States to criminalize the passive and active corruption of a Community official or national official (arts. 2 and 3),[22] while the EU Joint Action calls for the criminalization of the offences of passive[23] and active[24] corruption in the private sector (arts. 2 and 3).

51. The OAS Convention requires that States parties that have not yet done so shall adopt the necessary legislative or other measures to establish as criminal offences the following acts of corruption: (a) the solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, in exchange for any act or omission in the performance of his public functions; (b) the offering or granting, directly or indirectly, to a government official or a person who performs public functions, of any article of monetary value, or other benefit, in exchange for any act or omission in the performance of his public functions; (c) any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party; (d) the fraudulent use or concealment of property derived from any of the acts referred to in the article; and (e) participation as a principal, coprincipal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the above acts (arts. VI and VII).

52. Pursuant to articles VIII and IX, subject to its constitution and the fundamental principles of its legal system, each State party that has not yet done so shall take the necessary measures to criminalize transnational bribery[25] and illicit enrichment.[26] Among those States parties which have established transnational bribery and illicit enrichment as an offence, such offences shall be considered an act of corruption for the purposes of the Convention. Any State party that has not established transnational bribery and illicit enrichment as an offence shall, insofar as its laws permit, provide assistance and cooperation with respect to those offences as provided in the Convention.

53. Pursuant to article 1 the OECD Convention, States parties shall take measures to establish that it is a criminal offence for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business. Each State party shall also take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorization of an act of bribery of a foreign public official shall be a criminal offence. In addition, attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that party.

54. The OECD Convention requires also that each party that has made bribery of its own public official a predicate offence for the purpose of the application of its money-laundering legislation shall do so on the

same terms for the bribery of a foreign public official (art. 7).

C. Liability of legal persons

55. Most of the legal instruments against corruption under review include provisions on the liability of legal persons.

56. Article 10 of the United Nations Convention foresees the liability of legal persons for, inter alia, the offence established in accordance with article 8 (i.e. corruption of public officials). Subject to the legal principles of the State party, the liability of legal persons may be criminal, civil or administrative.

57. According to the COE Criminal Law Convention, legal persons will be liable for the criminal offences of active bribery, trading in influence and money-laundering established in accordance with the Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences (art. 18, para. 1). In addition, each State party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person has made possible the commission of the criminal offences mentioned above for the benefit of that legal person by a natural person under its authority (art. 18, para. 2).

58. The EU Convention on PFI introduces the concept of "criminal liability of heads of business" and establishes that each member State shall take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable in accordance with the principles defined by its national law in cases of fraud affecting the European Community's financial interests by a person under their authority acting on behalf of the business (art. 3). A similar provision on the criminal liability of heads of business is contained in the EU Convention on the fight against corruption (art. 6).

59. On the issue of liability of legal persons, both the Second Protocol to the EU Convention on PFI (art. 3) and the EU Joint Action (art. 5) largely echo the provisions of the COE Criminal Law Convention. As legal instruments of the Council of Europe, the Second Protocol and the EU Joint Action also address the possibility of a legal person being held liable where the lack of supervision or control by a person, who has a leading position with the legal person, has made possible the commission of a fraud or an act of active corruption or money-laundering for the benefit of that legal person by a person under its authority.

60. According to the OECD Convention, each party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official (art. 2).

D. Measures and sanctions

61. As regards measures and sanctions, the United Nations Convention states that each State party shall adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials and shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (art. 9). The Convention provides also that each State shall ensure that legal persons are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (art. 10). In addition, each State party shall make the commission of an offence established in accordance with, inter alia, article 8 liable to sanctions that take into account the gravity of that offence (art. 11).

62. On the basis of the COE Criminal Law Convention, States are required to provide effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty that can give rise to extradition (art. 19, para. 1). Legal persons shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (art. 19, para. 2).

63. Criminal penalties that are effective, proportionate and dissuasive, including—at least in serious cases—penalties involving deprivation of liberty that can give rise to extradition, are also

advocated by the EU Convention on PFI (art. 2), the First Protocol to the EU Convention on PFI (art. 5), the EU Convention on the fight against corruption (art. 5) and the EU Joint Action (art. 4) for the conduct referred to in those instruments as well as for participating in and instigating that conduct.

64. In connection with legal persons, the Second Protocol to the EU Convention on PFI (art. 4) and the EU Joint Action (art. 6) call for effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent disqualification from the practice of commercial activities; (c) placing under judicial supervision; and (d) a judicial winding-up order.

65. The OECD Convention calls for criminal penalties that are effective, proportionate and dissuasive, applicable to natural and legal persons alike,[27] for the bribery of foreign public officials. The Convention specifies that the range of penalties shall be comparable to that applicable to the bribery of the party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition (art. 3).

E. Prevention

66. Among the different anti-corruption legal instruments analysed in this section, the OAS Convention is the most detailed on the prevention of corruption.[28]

67. In accordance with article III, States parties agree to consider the applicability, within their own institutional systems, of a set of different measures to prevent acts of corruption. In particular, such measures are aimed at creating, maintaining and strengthening: (a) standards of conduct for the correct, honourable and proper fulfilment of public functions; (b) mechanisms to enforce those standards of conduct; (c) instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities; (d) systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law; (e) systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems; (f) government revenue collection and control systems that deter corruption; (g) laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States parties; (h) systems for protecting public servants and private citizens who, in good faith, report acts of corruption; (i) oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts; (j) deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of associations maintain books and records that accurately reflect the acquisition and disposition of assets and have sufficient internal accounting controls to enable their officers to detect corrupt acts; (k) mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption; and (l) the study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

68. The United Nations Convention introduces and promotes the concept of "integrity" of public officials and foresees that each State party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions (art. 9).

69. In connection with the issue of prevention, the COE Criminal Law Convention establishes that each party shall adopt such measures as may be necessary to ensure that persons or entities are specialized in the fight against corruption, that they have the necessary independence and that the staff of such entities has adequate training and financial resources for their tasks (art. 20).

70. The OECD Convention requires that parties take necessary measures, within the framework of their relevant laws and regulations, to prohibit the establishment of off-the-books accounts and similar practices used to bribe foreign public officials or to hide such bribery (art. 8).

F. Jurisdiction

71. On jurisdiction, the United Nations Convention stipulates that each State party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with the Convention when (a) the offence is committed in the territory of that State party; or (b) the offence is committed on board a vessel that is flying the flag of that State party or an aircraft that is registered under the laws of that State party at the time that the offence is committed (art. 15, para. 1). Subject to article 4, "Protection of sovereignty", a State party may also establish its jurisdiction over any such offence when (a) the offence is committed against a national of that State party; or (b) the offence is committed by a national of that State party or a stateless person who has his or her habitual residence in its territory (art. 15, para. 2 (a) and (b)).

72. It must be added that, in accordance with article 16, paragraph 10, a State party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which the Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the State party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution.[29]

73. According to the provisions of the COE Criminal Law Convention, each party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with the Convention where: (a) the offence is committed in whole or in part in its territory; (b) the offender is one of its nationals, one of its public officials or a member of one of its domestic public assemblies; and (c) the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in articles 9-11 (i.e. officials of international organizations, members of international parliamentary assemblies and judges and officials of international courts) who is at the same time one of its nationals. In addition, each State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary-General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in the Convention (art. 17).[30]

74. The EU Convention on PFI provides that each member State shall take the necessary measures to establish its jurisdiction over the offences it has established in accordance with the Convention when (a) fraud, participation in fraud or attempted fraud affecting the European Communities' financial interests is committed in whole or in part within its territory, including fraud for which the benefit was obtained in that territory; (b) a person within its territory knowingly assists or induces the commission of such fraud within the territory of any other State; and (c) the offender is a national of the member State concerned, provided that the law of that member State may require the conduct to be punishable also in the country where it occurred (art. 4).

75. Likewise, the First Protocol to the EU Convention on PFI establishes a series of criteria conferring jurisdiction to prosecute and try cases involving the offences covered by the Protocol, such as (a) the offence is committed in whole or in part within its territory; (b) the offender is one of its nationals or one of its officials; (c) the offence is committed against a national of the member State, being an official as defined by the Protocol, or member of a Community institution; and (d) the offender is a Community official working for a Community institution or a body set up in accordance with the Treaties establishing the European Communities that has its headquarters in the member State concerned (art. 6). Similar provisions related to jurisdiction are contained in the EU Convention on the fight against corruption (art. 7).

76. According to the EU Joint Action, each member State shall take the necessary measures to establish its jurisdiction with regard to the offences of passive and active corruption in the private sector where the offence has been committed (a) in whole or in part within its territory; or (b) by one of its nationals, provided that the law of that member State may require the conduct to be punishable also in the country where it occurred; or (c) for the benefit of a legal person operating in the private sector that has its head office in the territory of that member State (art. 7).

77. Under article V of the OAS Convention, each State party shall adopt such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with the Convention

when the offence in question is (a) committed in its territory; or (b) is committed by one of its nationals or by a person who habitually resides in its territory; or (c) when the alleged criminal is present in its territory and the State party does not extradite such person to another country on the ground of the nationality of the alleged criminal.

78. Each State party to the OECD Convention is required to establish jurisdiction over the bribery of foreign public officials when the offence is committed in whole or in part in their territories. Each party that has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official (art. 4, paras. 1 and 2).

79. In addition, the OECD Convention provides that parties shall review their current basis for jurisdiction and take remedial steps if it is not effective in the fight against the bribery of foreign public officials. Parties shall consult when more than one party has jurisdiction with a view to determining the most appropriate jurisdiction for prosecution (art. 4, paras. 3 and 4).[31]

80. Some of the instruments under review contain a provision aimed at guaranteeing that their respective articles related to jurisdiction do not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its domestic law.[32]

G. International cooperation

81. Under article 16 of the United Nations Convention, extradition from another State party may be sought for the four specific offences established by the Convention,[33] or for any serious crime, where an organized criminal group is involved, the person whose extradition is sought is in the requested State party and the offence itself is punishable under the domestic law of both States.[34]

82. As already mentioned in the section on "jurisdiction", according to the United Nations Convention, a State party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which the Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the State party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purposes of prosecution (art. 16, para. 10).[35] Finally, States parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters (art. 16, para. 15).

83. Pursuant to article 18, the widest measure of mutual legal assistance must be provided to another State party for any investigation, prosecution or judicial proceedings in relation to offences covered by the Convention. The provisions of the article can be used to obtain statements or other evidence, conduct searches or seizures, serve judicial documents, examine objects or sites, obtain original documents or certified copies, identify or trace proceeds of crime or other property, obtain bank, corporate or other records, facilitate the appearance of persons in the requesting State party or any other form of assistance permitted by the laws of the States involved (art. 18, para. 3).

84. According to article 18, paragraph 8, States parties to the United Nations Convention shall not decline to render mutual legal assistance on the ground of bank secrecy.[36]

85. In addition, the United Nations Convention also provides the general basis for conducting joint investigations (art. 19), cooperation in special investigative procedures, such as electronic surveillance, and general law enforcement cooperation (arts. 20 and 27). The development of domestic training programmes and the provision of technical assistance to other States in training matters are also encouraged (arts. 29 and 30).

86. The COE Criminal Law Convention also provides for international cooperation in investigation and prosecution. In connection with mutual assistance, article 26, paragraph 1, provides that parties shall afford one another the widest measure of mutual assistance by processing requests from appropriate authorities. This provision contains the additional requirement of processing the request promptly. Mutual assistance may be refused if the request undermines the fundamental interests, national sovereignty, national security or *ordre public* of the requested party (art. 26, para. 2). States parties cannot invoke bank secrecy as a ground to refuse international cooperation (art. 26, para. 3).

87. Article 27, "Extradition", provides that the criminal offences established in accordance with the

COE Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the parties. The parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them. If a party that makes extradition conditional on the existence of a treaty receives a request for extradition from another party with which it does not have an extradition treaty, it may consider the Convention as the legal basis for extradition with respect to any criminal offence established in accordance with the Convention. Parties that do not make extradition conditional on the existence of a treaty shall recognize criminal offences established in accordance with the Convention as extraditable offences between themselves.

88. In connection with the issue of extradition and prosecution, the EU Convention on PFI requires that any member State that, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences established in accordance with the Convention when committed by its own nationals outside its territory (art. 5, para. 1). In addition, a member State may not refuse extradition in the event of fraud affecting the European Communities' financial interests for the sole reason that it concerns a tax or customs duty offence (art. 5, para. 3). Article 6 stipulates that member States shall cooperate effectively if a fraud, as defined by the Convention, concerns at least two member States.

89. Article 7 of the Second Protocol to the EU Convention on PFI sets out the provisions governing cooperation between the member States and the Commission in the area of the EU Convention on PFI and the protocols thereto and lays down the obligations resulting from that cooperation for the Commission. According to that article, member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money-laundering. To that end, the Commission shall lend such technical and operational assistance as the competent national authorities may need to facilitate coordination of their investigations. The competent authorities in the member States may exchange information with the Commission so as to make it easier to establish the facts and to ensure effective action against fraud, active and passive corruption and money-laundering. The Commission and the competent national authorities shall take account, in each specific case, of the requirements of investigation secrecy and data protection.

90. The provisions on extradition, prosecution and cooperation (arts. 8 and 9) of the EU Convention on the fight against corruption are based largely on those of the EU Convention on PFI. The rules contained in the Convention are intended to supplement, with regard to corruption offences involving Community officials and officials of member States, the provisions on extradition of own nationals that are already in force between the member States and that arise from bilateral or multilateral extradition agreements.

91. Article XIII of the OAS Convention regulates the issue of extradition from one State party to another for offences established in accordance with the Convention.[37] The Convention also provides for mutual assistance and cooperation and that States parties, in accordance with their domestic laws and applicable treaties, shall afford one another the widest measure of mutual assistance by processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute the acts of corruption described in the Convention, to obtain evidence and take other necessary action to facilitate legal proceedings and measures regarding the investigation or prosecution of acts of corruption (art. XIV, para. 1).

92. States parties shall also provide each other with the widest measure of mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption (art. XIV, para. 2). In addition, States parties are required, in accordance with their applicable domestic laws and relevant treaties or other agreements that may be in force between or among them, to provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of offences established in accordance with the Convention (art. XV).

93. On the basis of article XVI, the requested State shall not invoke bank secrecy as a basis for refusal to provide the assistance sought by the requesting State.

94. States parties to the OECD Convention are committed to providing mutual legal assistance, which cannot be declined for criminal matters within the

scope of the Convention on the ground of bank secrecy, and to granting extradition in cases of bribery of a foreign public official (arts. 9 and 10, respectively).

95. Finally, most of the instruments under review provide for the designation, at the national level, of a central authority for the purpose of facilitating international cooperation among the States parties.[38]

H. Monitoring of implementation

96. Most of the anti-corruption legal instruments provide for a mechanism to monitor and evaluate their implementation.

97. According to article 32 of the United Nations Convention, a Conference of the Parties to the Convention is established to improve the capacity of States parties to combat transnational organized crime and to promote and review the implementation of the Convention. The Conference of the Parties will be convened by the Secretary-General of the United Nations not later than one year following the entry into force of the Convention. Each State party is supposed to provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement the Convention.

98. Both the COE Criminal Law Convention and the Civil Law Convention provide that the Group of States against Corruption (GRECO) will monitor the implementation of those instruments by the parties.

99. The Group of States against Corruption was established in May 1999 by the representatives of the Committee of Ministers of Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Spain and Sweden.[39] GRECO was established for an initial period of three years, at the end of which its functioning would be reviewed. The aim of GRECO is to improve its members' capacity to fight corruption by monitoring the compliance of States with their undertakings in this field.

100. The statute of GRECO defines a master-type procedure, which can be adapted to the different instruments under review. GRECO is responsible, in particular, for monitoring observance of the Twenty Guiding Principles for the Fight against Corruption and implementation of the international legal instruments adopted in pursuit of the Programme of Action against Corruption[40] (i.e. the Criminal Law and the Civil Law Conventions on Corruption) and Recommendation R (2000) 10 on codes of conduct for public officials.

101. Ad hoc teams of experts are appointed, on the basis of the list of experts proposed by GRECO members, to evaluate each member in each evaluation round. Evaluation teams are supposed to examine replies to questionnaires, request and examine additional information to be submitted either orally or in writing, visit member countries for the purpose of seeking additional information of relevance to the evaluation and prepare draft evaluation reports for discussion and adoption at the plenary sessions.[41]

102. As regards the implementation of the EU instruments, none of those texts has come into force yet (except for the EU Joint Action on private sector corruption, which follows a different procedure), since not every member State has completed its relevant national ratification procedure and adopted the necessary implementing legislation.

103. Recommendation 7 of the document "The Prevention and Control of Organized Crime: A European Strategy for the Beginning of the New Millennium" of the EU Council mentions corruption in the context of financial crime as one of those offences where the Council should adopt instruments with a view to aligning the legislation of member States by agreeing on common definitions, incriminations and sanctions and develop a more general EU policy. Recommendation 27 of the same document urges the Council and member States to ratify (a) by mid-2001 the EU Convention on PFI; (b) by the end of 2001 the two protocols to the EU Convention on PFI; and (c) by the end of 2001 the Convention on the fight against corruption involving officials of the European Communities or officials of the EU member States.

104. In connection with the review of the implementation of these instruments, it is worth noting that the EU Action Plan against Organized Crime (1998) has set up a mechanism for peer evaluation, which so far has not been extended to the field of the fight against corruption. However, it should be noted that the European Court of Justice also has a role to play, given that it has interpretative competence and may pass judgement in cases of disputes regarding

the conventions and protocols (but not with regard to the EU Joint Action).

105. As far as the OAS Convention is concerned, the establishment of a monitoring mechanism is currently under discussion.

106. Within the framework of the OECD Working Group on Bribery in International Business Transactions and pursuant to the OECD Convention (art. 12) and the Revised Recommendation on Combating Bribery in International Business Transactions, a rigorous procedure for self-evaluation and mutual evaluation was adopted to ensure compliance with the Convention and implementation of the Revised Recommendation.

107. Phase 1 of the monitoring, which began in April 1999, assesses the conformity of implementing legislation of countries with the OECD Convention. All 21 countries, out of the 34 signatories, that had deposited their instruments of ratification or acceptance of the Convention by June 2000[42] have been subject to close peer scrutiny under Phase 1 monitoring. For each country reviewed, the Working Group adopted a report, including an evaluation, which was made available to the public after the OECD meeting at the ministerial level.[43] All remaining signatories of the Convention will be examined following adoption of implementing legislation and ratification and their report, together with an evaluation, should be submitted to ministers in early 2001. Phase 1 monitoring should be completed in the course of 2001.

108. As highlighted in its report on the implementation of the OECD Convention presented in June 2000,[44] the Working Group noted that there was overall compliance with the Convention's obligations in the great majority of countries. The Working Group made specific recommendations for remedial action wherever potential loopholes or gaps were observed or where it considered that the national provisions fell below the standards set by the Convention. In other cases, the Working Group noted that certain issues needed further study as "horizontal issues" affecting the implementation of the Convention (e.g. responsibility of legal persons, sanctions, including the seizure and confiscation of the bribe and the proceeds, jurisdiction and mutual legal assistance). Specific follow-up in Phase 2 of the monitoring process will also be required in particular countries.

109. Phase 2 of monitoring will start in mid-2001. It will focus on the study of countries' structures to enforce the laws and rules implementing the Convention and assess their application in practice. Phase 2 will also broaden the focus of monitoring to encompass more fully the non-criminal law aspects of the Revised Recommendation.

I. Other measures

110. Besides the provisions mentioned above, most of the instruments under review include other relevant measures, such as those aimed at the seizure and confiscation of the proceeds of the offences covered by their respective provisions or property the value of which corresponds to that of such proceeds.

111. In connection with confiscation and seizure, the United Nations Convention foresees that States parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of (a) proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds; and (b) property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (art. 12, para. 1).

112. For the purposes of article 12, "Confiscation and seizure", and of article 13, "International cooperation for the purposes of confiscation", each State party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States parties shall not decline to act on the ground of bank secrecy (art. 12, para. 6).

113. The disposal of confiscated proceeds of crime or property is covered by article 14, according to which proceeds of crime or property confiscated by a State party pursuant to the Convention shall be disposed of by the State party in accordance with its domestic law and administrative procedures.

114. According to article 19 of the COE Criminal Law Convention, each party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise remove the instrumentalities and proceeds of criminal offences established in accordance with the Convention, or property the value of which corresponds to such proceeds.

115. Each party shall adopt such legislative and other measures as may be necessary, including those permitting the use of special investigative techniques, in accordance with national law, to enable it to facilitate the gathering of evidence related to criminal offences established in accordance with the Convention and to identify, trace, freeze and seize instrumentalities and proceeds of corruption, or property the value of which corresponds to such proceeds, liable to measures set out in accordance with article 19 (art. 23, para.1). In addition, each party shall adopt such legislative and other measures as may be necessary to empower it. courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in paragraph 1 of article 23 (art. 23, para. 2).

116. Article 5 of the Second Protocol to the EU Convention on PFI provides that each member State shall take the necessary measures to enable the seizure and, without prejudice to the rights of bona fide third parties, the confiscation or removal of the instruments and proceeds of fraud, active and passive corruption and money-laundering, or property the value of which corresponds to such proceeds. Any instruments, proceeds or other property seized or confiscated shall be dealt with by the member State in accordance with its national law.

117. In its article XV, "Measures regarding property", the OAS Convention establishes that States parties, in accordance with their applicable domestic laws and relevant treaties or other agreements that may be in force between or among them, shall provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of offences established in accordance with the Convention.

118. In connection with the issue of seizure and confiscation, States parties to the OECD Convention shall take such measures as may be necessary to provide that the bribe and the proceeds of the bribery of a foreign public official, or property the value of which corresponds to that of such proceeds, are subject to seizure and confiscation or that monetary sanctions of comparable effect are applicable (art. 3, para. 3).

Civil Law Convention on Corruption of the Council of Europe

119. The COE Civil Law Convention constituted the first attempt to define common international rules in the field of civil law and corruption.

120. The main purpose of the Convention is to provide the right to compensation for damage resulting from an act of corruption (art. 1). To that end, each party is required to provide in its internal law for the right to bring civil suit in corruption cases (art. 3, para. 1). It should be noted that, under the Convention, damages need not be limited to any standard payment but must be determined according to the loss sustained in the particular case. Also, full compensation according to the Convention excludes punitive damages. However, parties whose domestic law provides for punitive damages are not required to exclude their application in addition to full compensation. The Convention specifies also the extent of the compensation to be granted by the Court and provides that the compensation may cover material damage, loss of profits and non-pecuniary loss (art. 3, para. 2).[45]

121. For the purposes of the Convention, "corruption" is defined as "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof" (art. 2).

122. The prerequisites of a claim for damages are addressed in article 4. In order to obtain compensation, the plaintiff has to prove the occurrence of the damage, whether the defendant acted with intent or negligently, and the causal link between the corrupt behaviour and the damage. As far as the unlawful and culpable behaviour on the part of the defendant is concerned, it should be indicated that those who directly and knowingly participate in the corruption are primarily liable for the damage and, above all, the giver and the recipient of the bribe, as well as those who incited or aided the corruption. Moreover, those who failed to take the appropriate steps, in the light of the responsibilities incumbent upon them, to prevent corruption would also be liable for damage.[46] Article 4 provides also for the joint and several liability of several joint offenders, regardless of whether they knowingly cooperated or whether one of them is

simply liable as a result of his or her negligent behaviour (art. 4, para. 2).

123. The Convention deals with the issue of state responsibility for acts of corruption by public officials. In that connection it is established that each party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-State party, from that party's appropriate authorities (art. 5). The Convention does not indicate the conditions for the liability of the party. The Convention leaves each party free to determine in its internal law the conditions under which the party would be liable. Therefore, the conditions and procedures for filing claims against the State for damage caused by acts of corruption committed by public officials in the exercise of their functions will be governed by the domestic law of the party concerned. [47]

124. As regards validity of contracts, each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void. In addition, each party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages (art. 8).

125. The issue of the protection of employees is also covered by the Convention, which requires each party to take the necessary measures to protect employees who report in good faith and on the basis of reasonable grounds their suspicions on corrupt practices or behaviours from being victimized in any way (art. 9).[48]

126. National laws on accounts and audits are recognized as important tools for identifying and combating corruption. Therefore, the Convention provides that each party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position. With a view to preventing acts of corruption, each party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position (art. 10).

127. In connection with international cooperation, the parties are required to cooperate effectively in matters relating to civil proceedings in cases of corruption, especially concerning the service of documents, obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements and litigation costs, in accordance with the provisions of relevant international instruments on international cooperation in civil and commercial matters to which they are party, as well as with their internal law (art. 13).

IV. Recommendations and other documents addressing corruption

A. United Nations

1. International Code of Conduct for Public Officials

128. In December 1996, the General Assembly adopted two important instruments in the fight against corruption: the International Code of Conduct for Public Officials (resolution 51/59, annex) and the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (resolution 51/191, annex). Although both instruments are non-binding, they are still politically relevant as they represent a broad agreement in the international community on these matters.

129. The International Code of Conduct for Public Officials has been adopted as a tool to guide Member States in their efforts against corruption through a set of basic recommendations that national public officials[49] should follow in the performance of their duties.

130. The Code deals with the following aspects: (a) the general principles that should guide public officials in the performance of their duties (i.e. loyalty, integrity, efficiency, effectiveness, fairness and impartiality); (b) conflict of interest and disqualification; (c) disclosure of personal assets by public officials, as well as, if possible, by their spouses and/or dependants; (d) acceptance of gifts or other favours; (e) the handling of confidential information; and (f) the political activity of public officials, which, according to the Code, shall not be such as to impair public confidence in the impartial performance of the functions and duties of the public official.

2. United Nations Declaration against Corruption and Bribery in International Commercial Transactions

131. The United Nations Declaration against Corruption and Bribery in International Commercial Transactions (resolution 51/191, annex) includes a set of measures that each country could implement at the national level, in accordance with its own constitution, fundamental legal principles, national laws and procedures, to fight against corruption and bribery in international commercial transactions.

132. The Declaration addresses the bribery of foreign public officials. According to paragraph 3 of the Declaration:

"3. Bribery may include, inter alia, the following elements:

"(a) The offer, promise or giving of any payment, gift or other advantage, directly or indirectly, by any private or public corporation, including a transnational corporation, or individual from a State to any public official or elected representative of another country as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction;

"(b) The soliciting, demanding, accepting or receiving, directly or indirectly, by any public official or elected representative of a State from any private or public corporation, including a transnational corporation, or individual from another country of any payment, gift or other advantage, as undue consideration for performing or refraining from the performance of that official's or representative's duties in connection with an international commercial transaction."

133. The Declaration contains different provisions aimed at combating the phenomenon, including the adoption or, where they already exist, enforcement of laws prohibiting bribery in international commercial transactions; the criminalization of such bribery as well as the denial of tax deductibility of bribes paid by any private or public corporation or individual of a State to any public official or elected representative of another country.

134. In addition, Member States committed themselves to develop or maintain accounting standards and practices that improve the transparency of international commercial transactions; to develop or to encourage the development of business codes, standards or best practices that prohibit corruption, bribery and related illicit practices in international commercial transactions; to examine establishing illicit enrichment by public officials or elected representatives as an offence; and to ensure that bank secrecy provisions do not impede or hinder criminal investigations or other legal proceedings relating to corruption, bribery or related illicit practices in international commercial transactions.

135. Finally, Member States committed themselves to cooperate and afford one another the greatest possible assistance in connection with criminal investigations and other legal proceedings brought in respect of corruption and bribery in international commercial transactions, including sharing of information and documents.

3. Conclusions and recommendations of the Expert Group Meeting on Corruption and its Financial Channels, Paris, 30 March-1 April 1999

136. In its resolution 1998/16 of 28 July 1998, the Economic and Social Council decided to convene an open-ended meeting of governmental experts to explore means of ensuring that recent multilateral initiatives against corruption were effective and that an appropriate international strategy against corruption, including the proceeds thereof, was formulated in consultation with other intergovernmental organizations active in that area.

137. After identifying a set of measures to improve international cooperation in combating corruption and the detection of financial flows related to corruption, the Expert Group made a series of recommendations to be taken both at the international and the national levels (see E/CN.15/1999/10, sects. B, D and E).

138. At the international level, the Expert Group, inter alia, stressed the need to explore ways and means of persuading all insufficiently regulated financial centres to adopt rules enabling them to trace and take action against the proceeds of corruption, to participate actively in international cooperation efforts against related financial crime and, if necessary, to consider the introduction of measures to protect the global financial system from centres that pose the most

significant problems or that do not participate in international cooperation.

139. At the national level, the Expert Group recommended that corruption in all its forms be criminalized and that bribe-givers and the proceeds of corruption be covered under anti-money-laundering laws; steps should be taken to ensure that bank secrecy and tax provisions did not hamper international administrative and judicial cooperation in combating corruption as well as to ensure that the authorities possessed sufficient capacities to provide prompt judicial cooperation in cases involving corruption or the laundering of the proceeds of corruption; and the capacity of States to prevent their financial systems from being used by bribe-givers and bribe-takers to transfer or launder money related to corrupt deals should be strengthened through the establishment of systems for the appropriate regulation and supervision of financial activities, based on internationally accepted principles.

140. In addition, the Expert Group proposed the use of comprehensive systems for the prevention of money-laundering and the detection of illicit financial flows in combating corruption, including, in particular, the requirement that financial institutions should identify their customers, exercise vigilance and report suspicious transactions to a competent authority responsible for their investigation.

4. Action against corruption (General Assembly resolution 54/128)

141. In its resolution 54/128, the General Assembly addressed the need to fight corruption focusing mainly on two aspects: (a) ensuring the adequacy of national legal regimes in terms of guarding against corruption and providing for forfeiture of the proceeds of corruption; and (b) developing a global strategy to strengthen international cooperation aimed at the prevention and punishment of corruption, including the links of corruption with organized crime and money-laundering.

142. As regards the first aspect, the Assembly invited Member States to draw upon available international assistance, with a view, where necessary (a) to criminalizing corruption in all its forms and amending the provisions against money-laundering so that they covered bribes and the proceeds of corruption; (b) to improving the transparency, vigilance and monitoring of financial transactions and limiting bank and professional secrecy in cases involving criminal investigations; (c) to promoting both inter-agency coordination and international administrative and judicial cooperation in matters involving corruption; (d) to promoting the full involvement of civil society in efforts to fight corruption; and (e) to providing for the possibility of granting extradition and mutual assistance in cases involving corruption or money-laundering.

143. In connection with the second aspect, the Assembly encouraged Member States to become parties to and to implement the terms of relevant international conventions and other instruments aimed at fighting corruption as well as to explore the possibility of developing a global system for peer review regarding the adequacy of practices aimed at fighting corruption.

5. Report of the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

144. At the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10 to 17 April 2000,[50] the issue of corruption was addressed both in the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century, and in the workshop on combating corruption, organized by the United Nations Interregional Crime and Justice Research Institute in cooperation with the International Scientific and Professional Advisory Council.

145. In adopting the Vienna Declaration, Member States committed themselves to take enhanced international action against corruption, building on the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, the International Code of Conduct for Public Officials, relevant regional conventions and regional and global forums, and stressed the urgent need to develop an effective international legal instrument against corruption.

146. The workshop on combating corruption focused mainly on what kind of measures could work effectively against corruption. Within that context, the workshop adopted the multidisciplinary approach advocated in the global programme against corruption developed and launched by the Centre for International

Crime Prevention of the Secretariat and the United Nations Interregional Crime and Justice Research Institute.

147. There was general agreement on the importance of transparency and the independence and integrity of investigative and subsequent criminal justice processes. The discussion highlighted the need for justice to be applied to past activities, including financial recovery of the proceeds of corruption, proper investigation, prosecution and the application of effective criminal and/or non-criminal sanctions.

148. At the same time it was considered necessary to provide appropriate prevention measures for the future, including the strengthening of civil society (including the media and the private sector), decreasing opportunities for corruption of high- and low-level officials, improving their status and providing social rewards for those who were not corrupt in the performance of their duties.

B. Other intergovernmental organizations

1. Council of Europe

(a) Twenty Guiding Principles for the Fight against Corruption

149. In its resolution (97) 24 of 6 November 1997, the Committee of Ministers of the Council of Europe agreed to adopt the Twenty Guiding Principles for the Fight against Corruption, developed by the Multidisciplinary Group on Corruption set up as a result of the 19th Conference of European Ministers of Justice, held in Valletta in 1994. The Principles represent the fundamental directives that member States are called upon to implement in their efforts against corruption both at the national and the international levels.

150. The Principles, which are based on the recognition that the fight against corruption must be multidisciplinary, include different elements such as (a) raising public awareness and promoting ethical behaviour; (b) ensuring coordinated criminalization of national and international corruption; (c) guaranteeing the appropriate independence and autonomy of those in charge of the prevention, investigation, prosecution and adjudication of corruption offences; (d) taking appropriate measures for the seizure and deprivation of the proceeds of corruption offences as well as for preventing legal persons from being used to shield corruption offences; and (e) limiting immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society.

151. In addition, the Committee of Ministers agreed on other measures such as (a) promoting the specialization of persons or bodies in charge of fighting corruption and providing them with appropriate means and training to perform their tasks; (b) denying tax deductibility for bribes or other expenses linked to corruption offences; (c) adopting codes of conduct both for public officials and for elected representatives; (d) promoting transparency within the public administration, in particular through the adoption of appropriate auditing procedures to the activities of public administration and the public sector as well as of appropriately transparent procedures for public procurement; (e) guaranteeing that the media have freedom to receive and impart information on corruption matters; (f) ensuring that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption; and (g) ensuring that in every aspect of the fight against corruption, the possible connections with organized crime and money-laundering are taken into account.

152. As mentioned above (see paras. 98-100), GRECO, besides being responsible for the monitoring of the COE Criminal Law and Civil Law Conventions, is also responsible for monitoring observance of the Twenty Guiding Principles for the Fight against Corruption.

153. Since none of the conventions drawn up by the Council of Europe is yet in force, for its first evaluation (January 2000-December 2001) GRECO selected a limited number of the Twenty Guiding Principles related to (a) independence, autonomy and powers of persons or bodies in charge of preventing, investigating, prosecuting and adjudicating corruption offences; (b) immunities from investigation, prosecution or adjudication of corruption offences; and (c) specialization, means and training of persons or bodies in charge of fighting corruption. GRECO agreed that questionnaires for the first evaluation round should be composed of two parts, a general part on the general framework of the fight against corruption, laws,

institutions, mechanisms and prevention, together with a specific part devoted to the provisions of the Guiding Principles selected for the first evaluation.

154. GRECO decided that all members should be visited by evaluation teams during the first round. By the end of November 2000, visits had been made to Belgium, Finland, Georgia, Luxembourg, Slovakia, Slovenia, Spain and Sweden. Cyprus was to be visited in December 2000 and the remaining members in 2001.

(b) Model code of conduct for public officials

155. On 11 May 2000, the Committee of Ministers of the Council of Europe adopted a recommendation on codes of conduct for public officials, which includes, in the appendix, the model code of conduct for public officials.

156. The Committee of Ministers recommended that the member States promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials based on the model code of conduct for public officials annexed to the Recommendation.

157. The model code of conduct provides suggestions on how to deal with real situations frequently confronting public officials: gifts, use of public resources, dealing with former public officials and so on. The code stresses the importance of the integrity of public officials and the accountability of hierarchical superiors. It comprises three objectives: to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to tell the public what it is entitled to expect from its public officials.

158. The model code contains a series of general principles by which public officials are bound and specific provisions concerning, for example, conflict of interest, incompatible outside activities, how to react when confronted with problems such as offers of undue advantages, especially gifts, susceptibility to the influence of others, misuse of official position, use of official information and public resources for private purposes and the rules to follow when leaving the public service, especially in relations with former public officials.

159. GRECO is responsible for monitoring the implementation of the Recommendation.

2. Organisation for Economic Cooperation and Development

Revised Recommendation on Combating Bribery in International Business Transactions

160. OECD members adopted a first Recommendation on Bribery in International Business Transactions in 1994. In 1997, the OECD Working Group on Bribery reviewed the 1994 Recommendation. The Revised Recommendation on Combating Bribery in International Business Transactions, adopted by the OECD Council on 23 May 1997, is the result of analytic work on anti-corruption measures and commitments undertaken over the previous three years to combat bribery in international business transactions.

161. The Revised Recommendation invites member countries to take effective measures to deter, prevent and combat international bribery in a number of areas. In particular, it outlines commitments in the fields of criminalization of bribery of foreign public officials (covered by the Convention negotiated pursuant to the 1997 Recommendation); accounting, banking, financial and other provisions to ensure that adequate records are kept and made available for inspection and investigation; and public subsidies, licences, government procurement contracts or other public advantages that could be denied as sanctions for bribery in appropriate cases. It also urges prompt implementation of the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials[51] and incorporates the proposals contained in the 1996 Recommendation of the Development Assistance Committee on Anti-Corruption Proposals for Aid-Funded Procurement.[52]

162. The Revised Recommendation also includes provisions concerning monitoring and other follow-up procedures designed to promote its implementation.

C. Other entities

1. Basel Committee on Banking Supervision

163. Only a relatively small part of the work of the Basel Committee on Banking Supervision is related to the issue of corruption. However, from the perspective of sound risk management, the Committee has issued guidance on money-laundering and "know-your-

customer" practices for banks. That guidance seeks to prevent the laundering of illicit moneys, including those derived from corruption, through the financial system.

164. The Committee's guidance is contained in three documents. The "Prevention of criminal use of the banking system for the purpose of money-laundering" of 1988 outlines the basic ethical principles and encourages banks to put in place effective procedures to identify customers, refuse suspicious transactions and cooperate with law enforcement agencies.

165. The 1997 "Core principles for effective banking supervision" states that banks should have adequate policies, practices and procedures in place, including strict know-your-customer rules. Specifically, supervisors should encourage the adoption of the relevant recommendations of the Financial Action Task Force on Money Laundering related to customer identification and record-keeping, increased diligence by financial institutions in detecting and reporting suspicious transactions and measures to deal with countries with inadequate anti-money-laundering measures. The 1999 "Core principles methodology" elaborates upon the 1997 "Core principles" by listing a number of essential and additional criteria.

166. Finally, it should be noted that the Committee is currently engaged in a review of sound know-your-customer procedures.

2. Financial Action Task Force on Money Laundering

167. In order to cover all relevant aspects of the fight against money-laundering, in 1990 the Financial Action Task Force on Money Laundering developed Forty Recommendations, which were revised in 1996. The Recommendations set out the basic framework for anti-money-laundering efforts and are designed to be of universal application. They cover the criminal justice system and law enforcement, the financial system and its regulation and international cooperation.

168. The Forty Recommendations are divided into four parts: (a) general framework; (b) role of national legal systems in combating money-laundering; (c) role of the financial system in combating money-laundering; and (d) strengthening of international cooperation.

169. Recommendation 4 states that each country should take such measures as may be necessary, including legislative ones, to enable it to criminalize money-laundering as set forth in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.[53] Countries should consider establishing an offence of money-laundering based on all serious offences and/or on all offences that generate a significant amount of proceeds.

170. Recommendations 10-29 deal respectively with customer identification and record-keeping rules, increased diligence of financial institutions, measures to cope with the problem of countries with no or insufficient anti-money-laundering measures and implementation and role of regulatory and other administrative authorities. Those recommendations should apply not only to banks, but also to non-bank financial institutions. Even for those non-bank financial institutions that are not subject to a formal prudential supervisory regime in all countries, for example, bureaux de change, Governments should ensure that such institutions are subject to the same anti-money-laundering laws or regulations as all other financial institutions and that those laws or regulations are implemented effectively (see recommendation 8).

171. Finally, recommendations 30-40 aim at strengthening international cooperation and provide rules for administrative cooperation as well as for other forms of cooperation, such as basis and means for cooperation in confiscation, mutual assistance and extradition.

3. Global Coalition for Africa

172. On 23 February 1999 representatives of a number of African countries met in Washington, D.C., under the auspices of the Global Coalition for Africa and co-sponsored by the Government of the United States of America, to discuss collaborative frameworks to address corruption. After discussion, the African participants, representing 11 countries (Benin, Botswana, Ethiopia, Ghana, Malawi, Mali, Mozambique, Senegal, South Africa, Uganda and the United Republic of Tanzania), agreed on 25 principles to combat corruption.

173. It was also agreed that the principles would provide a framework for collaboration among countries as well as for national action.

174. The introductory principles provide that Governments should demonstrate the leadership and political will to combat and eradicate corruption in all sectors of government and society by improving governance and economic management, by striving to create a climate that promotes transparency, accountability and integrity in public as well as private endeavours and by restoring popular confidence in government. Governments should also establish budgetary and financial transparency and strong financial management systems.

175. In addition, Governments are called upon to enact and enforce criminal laws that will deal effectively with corruption offences by imposing severe penalties on individuals convicted of corruption or corrupt practices and on business entities found to be involved in such practices. The Governments are also called upon to enact and enforce criminal and civil laws that provide for the recovery, seizure, forfeiture or confiscation of property and other assets acquired through corruption.

176. In order to promote integrity of the public service, the principles call for (a) the elimination of conflicts of interest by adopting and enforcing effective national laws, guidelines, ethical regulations or codes of conduct for public officials, which include rules on conflict of interest and requirements for the regular disclosure of financial interests, assets, liabilities, gifts and other transactions; (b) undertaking necessary administrative reforms to restore the morale and integrity of the public service, for example by ensuring merit-based recruitment and promotion policies and procedures and providing adequate benefits, including remuneration and pension schemes; (c) the promotion of transparency in procedures for public procurement and the sale or licensing of economic rights and interests by eliminating bureaucratic red tape, by providing for open and competitive bidding for government contracts, by prohibiting bribery and by adopting procedures for resolving challenges to the award of contracts or the sale or licensing of economic rights; and (d) restoration and maintenance of the independence of the judiciary and ensuring adherence to high standards of integrity, honesty and commitment in the dispensation of justice through, among other things, adopting a judicial code of conduct.

177. The principles also advocate the control of corruption in the private sector by stating that companies and organizations should be required to maintain adequate and accurate financial books and records and to adhere to internationally accepted standards of accounting. Self-regulating codes of conduct for different professions, including those in the private sector, should be established and enforced. The principles recommend that Governments promote standards for corporate governance and the protection of shareholder rights and prohibit individuals found guilty of corruption from bidding on public contracts or otherwise doing business with Governments.

178. The principles support both the involvement and participation of civil society, on a continuous basis, in the formulation, execution and monitoring of anti-corruption reform programmes and the public's right to information about corruption and corrupt activities through protection of the freedom of the press and effective parliamentary oversight and scrutiny.

179. With regard to mutual legal assistance and extradition, the principles recommend that Governments adopt cooperative arrangements at the regional and/or subregional levels that provide for the mutual exchange of ideas, information, best practices, intelligence and experiences for the purpose of minimizing risks of cross-border corruption, including international business transactions. They should facilitate the cooperative investigation of cases involving corruption by rendering mutual legal assistance in obtaining evidence, documents, articles, records and witness statements. They should also provide assistance in the investigation, recovery, seizure, freezing, forfeiture and confiscation of property in respect of the proceeds of corruption as well as the reciprocal enforcement of forfeiture and other such orders. Governments should apply reciprocal obligations for the extradition of those accused or convicted of corruption offences.

180. Finally, it was recommended to establish government-to-government mechanisms to monitor implementation of the principles, including a mutual reporting and evaluation process.

4. Global Forum on Fighting Corruption

181. The first Global Forum on Fighting Corruption was held from 24 to 26 February 1999 in Washington, D.C., and was attended by representatives

of 90 Governments. The purpose of the Forum was to strengthen efforts to control corruption and secure public integrity among government officials, in particular justice and security officials.

182. This initiative will be followed up by expert meetings and a worldwide ministerial conference, to be held from 28 to 31 May 2001 in The Hague.

183. The Global Forum identified a set of guiding principles, based on best practices shared during the conference, to promote public trust in the integrity of officials within the public sector by preventing, detecting and prosecuting or sanctioning official corruption and unlawful, dishonest or unethical behaviour.

184. The 12 guiding principles, each of which includes a list of related effective practices, address the control of corruption and the promotion of public integrity among justice and security officials from different perspectives, ranging from prevention and anti-corruption legislation to investigation and prosecution, to freedom of information, promotion of anti-corruption research and international cooperation.

185. The principles call for proper hiring procedures; the adoption of public management measures that affirmatively promote and uphold the integrity of justice and security officials; the establishment of ethical and administrative codes of conduct; freedom of information on corruption matters for the general public and the media, as well as the promotion and support to continued research on the issue of upholding integrity and preventing corruption among justice and security officials.

186. They also advocate support for the activities of regional and other multilateral organizations in anti-corruption efforts, including cooperating in carrying out programmes of systematic follow-up to monitor and promote the full implementation of appropriate measures to combat corruption, through mutual assessment by Governments of their legal and practical measures to combat corruption, as established by pertinent international agreements.

187. Furthermore, the guiding principles call for (a) the criminalization of bribery as well as the giving or receiving of an improper gratuity or gift, misuse of public property and other improper uses of public office for private gain; (b) the adoption of laws, management practices and auditing procedures that can promote the detection and reporting of corrupt activity, including the disclosure of assets by senior public officials and the denial of tax deductibility for bribes and other expenses linked to corruption, as well as the establishment of bodies responsible for preventing, detecting and eradicating corruption and for punishing and disciplining corrupt officials; and (c) the provision to criminal investigators and prosecutors of sufficient and appropriate powers and resources to uncover and prosecute corruption crimes effectively, including empowering courts or other competent authorities to order that bank, financial or commercial records be available or be seized and that bank secrecy not prevent such availability or seizure.

188. Finally, the principles advocate the impartiality of investigators, prosecutors and judicial personnel to enforce laws against corruption fairly and effectively together with the provision of sanctions and remedies, under both criminal and civil laws, that are sufficient to deter corrupt activity effectively and appropriately.

5. Group of Eight

189. At the summit of the Group of Seven held in Halifax, Canada, in 1995, it was decided to establish a group of senior experts with the mandate to examine existing arrangements for cooperation, both bilateral and multilateral, against transnational organized crime, to identify significant gaps and options for improved coordination and to propose practical action to fill such gaps. In April 1996, the Senior Experts Group on Transnational Organized Crime made 40 recommendations to combat transnational organized crime efficiently.

190. Those recommendations, endorsed by the Group of Seven at its summit in Lyons, France, in June 1996, were designed to focus on practical, legal and operational issues that affect law enforcement, to enhance law enforcement capabilities and cooperation between member States and to suggest steps that all nations could take, on a multidisciplinary basis, to meet the global challenge of transnational organized crime. In particular, in recommendation 32, States are encouraged to adopt the necessary legislative and regulatory measures to combat corruption, establish standards of good governance and legitimate commercial and financial conduct and develop cooperation mechanisms to curb corrupt practices.

191. In July 2000, at the summit in Okinawa, Japan, the Group of Eight renewed its commitment to combat corruption by deciding that, working with other countries, the Group of Eight would prepare for the launch of negotiations in the United Nations on a new instrument against corruption and instruct the Senior Experts Group to pursue work on the issue.

V. The question of illegally transferred funds and repatriation of such funds to the countries of origin

192. In its resolution 55/188, entitled "Preventing and combating corrupt practices and illegal transfer of funds and repatriation of such funds to the countries of origin", the General Assembly called for increased international cooperation, inter alia, through the United Nations system, with regard to devising ways and means of preventing and addressing illegal transfers, as well as repatriating illegally transferred funds to the countries of origin, and called upon all countries and entities concerned to cooperate in that regard.

193. As already mentioned in the introduction to the present report, in resolution 55/188 the General Assembly invited the intergovernmental open-ended expert group, which will prepare draft terms of reference for the negotiation of the future legal instrument against corruption pursuant to resolution 55/61, to examine also the question of illegally transferred funds and the repatriation of such funds to the countries of origin.

194. A particularly vexing problem is that of corrupt practices by top-level government officials. Such practices commonly involve (a) immense amounts of wealth that represent a comparatively high proportion of the victimized country's resources, and (b) the transfer of that wealth outside the country. The consequences are social and economic decay, political instability and large-scale demoralization.

195. One important step towards curbing this type of corruption would be to ensure that it is not profitable. However, experience so far conveys exactly the opposite message. Even when a corrupt leader is overthrown or dies, recovery of the assets is anything but guaranteed. Indeed, attempts to trace and repatriate the illegally exported wealth are invariably frustrated and sometimes result in frictions between different States or national Governments. Even the strongest and most persistent efforts have failed to deprive former corrupt leaders of the bulk of their ill-gotten gains.

196. It is fair to say that the issues relative to the repatriation of illegally exported funds by corrupt leaders fall into three broad categories: practical, political and legal difficulties.

A. Practical issues

197. The Government seeking repatriation of funds does not always have the necessary financial resources to trace and recover those funds. In the global economy, funds are extremely mobile and can be hidden through secrecy jurisdictions and tax havens. Intelligence and promising leads are often lacking. When it comes to the sophisticated laundering and investment of wealth exported overseas by top government officials, traditional investigative methods are often ineffective.

198. In some cases, Governments cannot cover the legal expenses and simply offer contingency fees. Given the length and uncertainty involved in the repatriation process, contingency fees are not a solution.

B. Political issues

199. The Government succeeding a corrupt leader often has to establish its legitimacy and obtain recognition by the international community, especially by the countries where the funds have been deposited or invested. Given the socio-economic devastation such leaders often leave behind them, the new Government may be unable to comply with international standards.

200. In some cases, the victimized Government may not pursue the claims with the required vigour for fear of embarrassing members of the local political and economic elite whose role in reconstruction is considered vital.

C. Legal issues

201. Frequently corrupt leaders dominate and shape the legislative and executive functions of the Government to the point that they are able to legalize their exploitative practices. In such cases, they can shield themselves from future legal action behind state sovereignty, act of State and immunity doctrines. If the new Government introduces retroactive legislation criminalizing the practices in question, such retroactivity of criminal law is not recognized in most countries.

202. Governments may be unable to recover funds because they failed to lay a legal basis—that is, a predicate offence and a court ruling—to support their claim in the courts of the requested State.

203. In criminal cases, the burden of proof is often impossible to meet, to a large extent because of the use of nominees, "shell" corporations, foundations and lawyers who are barred from disclosing their client's identity.

204. The existence of secrecy jurisdictions may also be an insurmountable problem. Such jurisdictions may collaborate in certain criminal cases, but the burden of proof may prove too hard to meet. If, on the other hand, a Government decides for that reason to pursue its claims through civil action, secrecy jurisdictions are generally not very collaborative.

205. All of the above issues become even more complicated when third (non-governmental) parties file claims to the same assets.

206. Finally, experience shows that the procedural requirements of requested States render the repatriation of funds an extremely long process at best.

207. In the present international and national legal contexts, therefore, both the recognition and the enforcement of claims against institutions in foreign jurisdictions are problematic.

208. Action at the international level to facilitate the return of stolen funds to the countries concerned appears to be critical and it should take into consideration the nature and extent of the problem, the similarities and differences in the numerous attempts to trace and recover funds for victimized countries and (private) third parties, the obstacles faced by those seeking repatriation of funds and the alternative options available in the short and long term.

VI. Conclusions

209. In recent years, the international community has demonstrated an increased awareness of the gravity of corruption. The academic and policy literature has been greatly enriched through studies, analysis and academic publications, which have reached and highlighted some common and basic conclusions. Corruption is multifaceted and affects every society regardless of its level of development or the sophistication of its organization. The effects of corruption vary, as do its manifestations. While the underlying causes may range from the societal to the institutional, one clear conclusion is that corruption exacerbates other problems and derails development efforts, while it wreaks havoc on efforts to build, consolidate or further develop democratic institutions. Another key element of the phenomenon is its progressively increasing complexity, as the stakes get higher. Recent developments in the political and economic spheres have had two major consequences. Firstly, the phenomenon is no longer confined within national borders and, secondly, if it ever was so confined, the levels of tolerance worldwide, of both the political leadership and the public at large, are dropping rapidly. This greatly diminished tolerance is coupled with consistent and strong calls for action against the phenomenon at all levels. Responding to those calls, the international community has begun to engage in the negotiation and the development of several international legal instruments within different organizations, such as the Council of Europe, EU, OAS and OECD.

210. This observation notwithstanding, analysis of the existing instruments, but also of recommendations and other documents, reflects several similarities in structure, components and, in some cases, language. Those similarities may be an indication of the fact that in efforts against corruption common problems have been confronted and the negotiation process has produced comparable solutions, despite the different contexts in which the solutions have been hammered out. This consideration would be useful for the work of the Commission and the open-ended intergovernmental

expert group in implementing their mandated functions.

211. With the exception of OECD, all the intergovernmental organizations through which the existing international legal instruments have been developed are regional. One remark that can be made in this connection is that the instruments have been developed by countries facing similar problems and sharing, at least to a certain degree, similar legal practices. Those characteristics are reflected in the approaches taken and the choices made in the instruments discussed here.

212. The OECD Convention is the only instrument that, with signatories from five continents, can be considered to have a wider geographical coverage. However, it tackles solely a specific part of the global problem of corruption, the so-called "supply" side of the bribery of foreign public officials.

213. There is another element to consider. As highlighted by one of the member States that has provided inputs and comments to the present report, among all the international legal instruments addressing corruption, the only legal instrument in the negotiation of which developing countries from all regions participated is the United Nations Convention against Transnational Organized Crime. It is therefore debatable whether the specific problems and concerns of many countries are fully reflected in the instruments.

214. In the light of the above, the mandate given by the General Assembly, in its resolutions 55/61 and 55/188, represents a unique opportunity to develop a global legal instrument against corruption that can fully address the concerns of the international community as a whole and can include provisions and mechanisms applicable at a global level. The international community is in the advantageous position of being able to take stock of what has proved more or less workable and feasible. It is also in a position to explore, with the benefit of the broadest possible participation, whether common thinking has evolved over the last few years and the experience of existing joint efforts has enabled innovative solutions to emerge.

Notes

[1] The only two anti-corruption legal instruments that have entered into force to date are the Inter-American Convention against Corruption of the Organization of American States of 1997 and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development of 1999.

[2] The Convention was signed in Palermo by 123 countries and the European Community. An updated list of signatories can be found on the Internet at http://www.odccp.org/crime_cicp_convention.html.

[3] According to article 33, on accession to the Convention, after the entry into force of the Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States to the Convention, may invite the European Community as well as any State not a member of the Council and not having participated in its elaboration to accede to the Convention, by a decision taken by the majority provided for in article 20 (d) of the statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

[4] The following member States of the Council of Europe have signed the Criminal Law Convention: Albania, Austria, Belgium, Bulgaria, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Sweden, Switzerland, Ukraine and United Kingdom of Great Britain and Northern Ireland. The Convention has also been signed by three non-member States of the Council of Europe: Belarus, Bosnia and Herzegovina and United States of America. At the time of preparation of the present report the following countries had ratified the Convention: Croatia, Cyprus, Czech Republic, Denmark, Hungary, Latvia, Slovakia, Slovenia and the former Yugoslav Republic of Macedonia.

[5] The following member States of the Council of Europe have signed the Civil Law Convention: Austria, Belgium, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Norway, Republic of Moldova, Romania, Slovakia, Sweden, the former Yugoslav Republic of Macedonia, Ukraine and United Kingdom. The Convention has also been signed by a non-member State of the Council of Europe, Bosnia and Herzegovina. So far, three countries have ratified the Convention: Albania, Bulgaria and Estonia.

[6] By December 2000, the following countries had notified the Secretary-General of the EU Council: Austria,

Finland, France, Germany, Greece, Spain, Sweden and United Kingdom.

[7] By December 2000, the following countries had notified the Secretary-General of the EU Council of the European Union: Austria, Finland, France, Germany, Greece, Sweden and United Kingdom.

[8] By December 2000, the following countries had notified the Secretary-General of the EU Council: Austria, Finland, France, Italy, Spain, Sweden and United Kingdom.

[9] See "Explanatory report on the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union", *Official Journal* C 391 (15 December 1998), pp. 1 and 2.

[10] By December 2000, the following countries had notified the Secretary-General of the EU Council: Austria, Finland, France, Spain, Sweden and United Kingdom.

[11] At the time of the preparation of the present report, the following countries had ratified the Convention: Argentina, Bahamas, Bolivia, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, United States, Uruguay and Venezuela. The following countries had signed but not ratified the Convention: Brazil, Guatemala, Haiti, Jamaica and Suriname.

[12] The Convention was the culmination of work initiated in 1994, at the request of the OECD Council of Ministers, which called upon member countries to enact effective measures to combat bribery in international business transactions. In 1994, OECD adopted a Recommendation on Combating Bribery in International Business Transactions and in 1996 a Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials. A Revised Recommendation on Combating Bribery in International Business Transactions was approved in May 1997.

[13] See the Commentaries on the Convention on Combating Bribery of Officials in International Business Transactions, adopted by the Negotiating Conference on 21 November 1997.

[14] At the beginning of 2001, 27 countries had adopted implementing legislation and deposited their instruments of ratification with the OECD Secretary-General: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, Mexico, Netherlands, Norway, Poland, Republic of Korea, Slovakia, Spain, Sweden, Switzerland, United Kingdom and United States. On the other hand, Brazil, Portugal and Turkey had ratified without completing the parliamentary process to adopt implementing legislation. Some of the remaining countries had implementing legislation in parliament and were expected to complete the necessary legislative action so they could deposit their instrument of ratification in the course of 2001 (Ireland, Luxembourg and New Zealand); others had not yet submitted implementing legislation to their parliament (Chile).

[15] Note that the OECD Convention deliberately does not utilize the term "active bribery" to avoid it being misread by the non-technical reader as implying that the briber has taken the initiative and the recipient is a passive victim.

[16] According to article 2 of the COE Criminal Law Convention, "active bribery" of a domestic public official is defined as the intentional "promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions". Article 3 defines "passive bribery" of domestic public officials as the intentional "request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions".

[17] Please note that in defining the active and passive bribery of all the different categories of officials the COE Criminal Law Convention makes reference to the definition provided in articles 2 and 3 (see footnote 16 above) in relation to domestic public officials.

[18] Article 7 of the COE Criminal Law Convention, "Active bribery in the private sector", states that each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties. Article 8, "Passive bribery in the private sector", states that each party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an

advantage, to act or refrain from acting in breach of their duties.

[19] On the basis of article 1 of the EU Convention on PFI, "fraud" affecting the European Communities' financial interests shall consist of: (a) in respect of expenditure, any intentional act or omission relating to (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities; (ii) non-disclosure of information in violation of a specific obligation, with the same effect; and (iii) the misapplication of such funds for purposes other than those for which they were originally granted; (b) in respect of revenue, any intentional act or omission relating to (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the Communities; (ii) non-disclosure of information in violation of a specific obligation, with the same effect; and (iii) misapplication of a legally obtained benefit, with the same effect.

[20] "Passive corruption" is defined in article 2 of the First Protocol to the EU Convention on PFI as the deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests. "Active corruption" is defined in article 3 as the deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way that damages or is likely to damage the European Communities' financial interests.

[21] According to article 1, subparagraph (e), of the Second Protocol to the EU Convention on PFI, money-laundering shall mean the conduct as defined in the third indent of article 1 of Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money-laundering, related to the proceeds of fraud, at least in serious cases, and of active and passive corruption.

[22] Like other provisions of the EU Convention on the fight against corruption, the wording of the definition of "passive" and "active" corruption is modelled substantially, with the necessary adjustments, on that of the corresponding articles of the First Protocol to the EU Convention on PFI (see footnote 20).

[23] According to article 2 of the EU Joint Action, "passive corruption in the private sector" is defined as the deliberate action of a person who, in the course of his business activities, directly or through an intermediary, requests or receives an undue advantage of any kind whatsoever, or accepts the promise of such an advantage, for himself or for a third party, for him to perform or refrain from performing an act, in breach of his duties. In accordance with article 1, "Breach of duty" shall be understood in accordance with national law. The concept of breach of duty in national law should cover as a minimum any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business of a person as defined by the EU Joint Action.

[24] According to article 3 of the EU Joint Action, "active corruption in the private sector" is defined as the deliberate action of whosoever promises, offers or gives, directly or through an intermediary, an undue advantage of any kind whatsoever to a person, for himself or for a third party, in the course of the business activities of that person in order that the person should perform or refrain from performing an act, in breach of his duties.

[25] Article VIII of the OAS Convention states that "subject to its constitution and the fundamental principles of its legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions".

[26] Article IX of the OAS Convention states that "subject to its constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offence a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions".

[27] According to article 3, paragraph 2, of the OECD Convention, in the event that, under the legal system of a party, criminal responsibility is not applicable to legal persons, that party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials.

[28] Note also that the United Nations Convention addresses the issue of "prevention" extensively (see art. 31), but more in relation to the various forms of transnational organized crime than "corruption" per se.

[29] See also article 15, paragraph 3.

[30] However, if a party has made use of the reservation possibility, it shall adopt such measures as may be necessary to establish jurisdiction over a criminal offence established in accordance with the Convention, in cases where an alleged offender is present in its territory and it does not extradite him to another party, solely on the basis of his nationality, after a request for extradition (art. 17, para. 3).

[31] A similar provision is contained in the United Nations Convention, which states that if a State party exercising its jurisdiction, under the appropriate articles of the Convention on jurisdiction, has been notified, or has otherwise learned, that one or more other States parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States parties shall, as appropriate, consult one another with a view to coordinating their actions (art. 15, para. 5).

[32] See article 15, paragraph 6, of the United Nations Convention, article 17, paragraph 4, of the COE Criminal Law Convention and article V, paragraph 4, of the OAS Convention.

[33] Participation in an organized criminal group (art. 5), laundering of the proceeds of crime (art. 6), corruption (art. 8) and obstruction of justice (art. 23).

[34] Some limits on extradition apply under the United Nations Convention, see article 16, paragraphs 7, 10 and 14.

[35] A similar provision is contained in the COE Criminal Law Convention (art. 27, para. 5), in the EU Convention on PFI (art. 5, para. 2), in the EU Convention on the fight against corruption (art. 8, para. 2), in the OAS Convention (art. XIII, para. 6) and in the OECD Convention (art. 10, para. 3).

[36] On the issue of "bank secrecy", reference is also made to article 12, paragraph 6, which provides that for the purpose of article 12, "Confiscation and seizure", and article 13, "International cooperation for purposes of confiscation", each State party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized and that States parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

[37] Article XIII of the OAS Convention provides (paras. 2-7):

"2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between or among the States Parties. The States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between or among them.

"3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any offence to which this article applies.

"4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

"5. Extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties ...

"6. If extradition for an offence ... is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over the offence, the Requested State shall submit the case to its competent authorities for the purpose of prosecution unless otherwise agreed with the Requesting State ...

"7. Subject to the provisions of its domestic law and its extradition treaties, the Requested State may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the Requesting State, take into custody a person whose extradition is sought and who is present in its territory, or take other appropriate measures to ensure his presence at extradition proceedings."

[38] See article 18, paragraph 13, of the United Nations Convention, article 29 of the COE Criminal Law Convention and article XVIII of the OAS Convention. A similar concept appears in the OECD Convention, which calls upon each State party to designate to the Secretary-General of OECD an authority or authorities responsible for making and receiving requests related to mutual legal assistance and extradition as well as to consultations among States parties to determine the most appropriate jurisdiction for prosecution (art. 11).

[39] The following member States of the Council of Europe have become member States of GRECO: Croatia, Denmark, Georgia, Hungary, Latvia, Norway, Poland, the former Yugoslav Republic of Macedonia and United

Kingdom. Two non-member States of the Council of Europe are also part of GRECO: Bosnia and Herzegovina and United States.

[40] The Programme of Action against Corruption, drafted by the Multidisciplinary Group on Corruption, was approved by the Committee of Ministers in November 1996.

[41] The evaluation procedures of GRECO are described in detail in articles 10-16 of the statute and in title II of the rules of procedure.

[42] Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Finland, Germany, Greece, Hungary, Iceland, Japan, Korea, Mexico, Norway, Slovakia, Spain, Sweden, Switzerland, United Kingdom and United States.

[43] The different country reports can be found on the Internet at http://www.oecd.org/daf/nocorruption/report.htm.

[44] On the monitoring of the OECD Convention, see the *Report by the CIME: implementation of the Convention on Bribery in International Business Transactions* and the 1997 Revised Recommendations (C/MIN (2000) 8) of 27 June 2000.

[45] See "Explanatory report on the Civil Law Convention on Corruption", paragraphs 35-38.

[46] Ibid., paragraphs 40, 42 and 46.

[47] Ibid., paragraph 49.

[48] The wording "appropriate protection against any unjustified sanction" in article 9 implies that, in accordance with the Convention, any sanction against employees based on the ground that they had reported an act of corruption to persons or authorities responsible for receiving such reports will not be justified. Reporting should not be considered a breach of the duty of confidentiality. It should be made clear that, although no one could prevent employers from taking any necessary action against their employees in accordance with the relevant provisions applicable to the circumstances of the case, employers should not inflict unjustified sanctions against employees solely on the ground that the latter had reported their suspicions to the responsible person or authority. Therefore the appropriate protection that parties are required to take should encourage employees to report their suspicions to the responsible person or authority. Indeed, in many cases, persons who have information about corruption activities do not report them mainly because of fear of the possible negative consequences. As far as employees are concerned, the protection provided covers only cases where they have reasonable ground to report their suspicions and report them in good faith. In other words, it applies only to genuine cases and not to malicious ones. See "Explanatory report ...", op. cit., paragraphs 66-72.

[49] As concerns the definition of "public official", reference is made to the definition provided by each country's national law.

[50] See *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8).

[51] The Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials invites member countries that allow the deductibility of such bribes to re-examine the issue with a view to denying such deductibility.

[52] The Recommendation on Anti-Corruption Proposals for Aid-Funded Procurement invites members to introduce or require anti-corruption provisions governing bilateral aid-funded procurement.

[53] See *Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

Annex I

Existing international legal instruments addressing corruption

Title	*Offences covered*	*Measures and sanctions*	*International cooperation*	*Prevention*	*Monitoring mechanism*
United Nations Convention against Transnational Organized Crime ("UN Convention")[1]	Corruption of domestic public officials	Each State party shall adopt legislative, administrative or other effective measures to prevent, detect and punish the corruption of public officials (art. 9). See also articles 10, "Liability of legal persons", and 11, "Prosecution, adjudication and sanctions".	*Extradition*: Yes. See article 16. *Mutual legal assistance*: Yes. The widest measure of mutual legal assistance can be requested from another State party for any investigation, prosecution or judicial proceedings in relation to offences covered by the Convention (art. 18).	The Convention promotes the concept of "integrity" of public officials and foresees the provision to the anti-corruption authorities of adequate independence to deter the exertion of inappropriate influence on their actions (art. 9).	A Conference of the Parties to the Convention will be convened not later than one year following the entry into force of the Convention to promote and review the implementation of the Convention (art. 32).
Criminal Law Convention of the Council of Europe ("COE Criminal Law Convention")[2]	1. Active and passive bribery of domestic and foreign public officials, parliamentarians, officials of international organizations, judges and officials of international courts. 2. Active and passive trading in influence. 3. Money-laundering of corruption proceeds. 4. Account offences connected with corruption offences. 5. Active and passive bribery in the private sector. 6. Law aiding or abetting the commission of any of the criminal offences established in accordance with the Convention.	States are required to provide effective, proportionate and dissuasive sanctions and measures, including, when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition (art. 19). Legal persons will be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (art. 19).	*Extradition*: Yes. Criminal offences established in accordance with the Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the parties (art. 27). *Mutual legal assistance*: Yes. The Convention foresees that parties will afford one another the widest measure of mutual assistance by processing requests from appropriate authorities (art. 26).	The Convention foresees the establishment of measures to ensure that persons or entities are specialized in the fight against corruption, that they have the necessary independence and that the staff of such entities has adequate training and financial resources for their tasks (art. 20).	The implementation of the Convention will be monitored by the Group of States against Corruption (GRECO). The evaluation procedures of GRECO are described in detail in articles 10-16 of the statute and in title II of the rules of procedure.

Title	*Offences covered*	*Measures and sanctions*	*International cooperation*	*Prevention*	*Monitoring mechanism*
Convention drawn up on the basis of article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests ("EU Convention on PFI")	Fraud affecting the European Communities' financial interests	The Convention advocates criminal penalties that are effective, proportionate and dissuasive, including—at least in serious cases—penalties involving deprivation of liberty that can give rise to extradition for the conduct referred to in the Convention as well as for participating in and instigating such conduct (art. 2).	The Convention requires that any member State that, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction over the offences established in accordance with the Convention when committed by its own nationals outside its territory. See articles 5, "Extradition and prosecution", and 6, "Cooperation."	No specific provisions.	No specific mechanism for the monitoring of the Convention is provided for. However, it should be noted that the European Court of Justice also has a role to play and has interpretative competence and may pass judgement in cases of disputes regarding the Convention.
Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests ("First Protocol to the EU Convention on PFI")	Active and passive corruption of a Community official or national official that damages or is likely to damage the European Communities' financial interests.	Same provisions as in the EU Convention on PFI. See article 5 of the Protocol.	Article 7 of the Protocol refers to specific provisions of articles 5, "Extradition and prosecution", and 6, "Cooperation", of the EU Convention on PFI, declaring them applicable to active and passive corruption as defined in the Protocol and to the offences defined in its article 4.	No specific provisions.	No specific mechanism for the monitoring of the Protocol is provided for. However, it should be noted that the European Court of Justice also has a role to play and has an interpretative competence and may pass judgement in cases of disputes regarding the Protocol.
Second Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests ("Second Protocol to the EU Convention on PFI")	Money-laundering.	In connection with legal persons, the Second Protocol (art. 4) calls for effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as: (a) Exclusion from entitlement to public benefits or aid; (b) Temporary or permanent disqualification from the practice of commercial activities; (c) Placing under judicial supervision; (d) A judicial winding-up order.	The Second Protocol sets forth the provisions governing cooperation between member States and the Commission in the area of the EU Convention on PFI and the Protocols to it and lays down the obligations resulting from that cooperation for the Commission. Member States and the Commission shall cooperate with each other in the fight against fraud, active and passive corruption and money-laundering (art. 7).	No specific provisions.	No specific mechanism for the monitoring of the Protocol is provided for. However, it should be noted that the European Court of Justice also has a role to play and has interpretative competence and may pass judgement in cases of disputes regarding the Protocol.

Title	*Offences covered*	*Measures and sanctions*	*International cooperation*	*Prevention*	*Monitoring mechanism*
Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of member States of the European Union ("EU Convention on the fight against corruption")	Active and passive corruption of a Community official or national official	Same provisions as in the EU Convention on PFI. See article 5 of the EU Convention on the fight against corruption	The provisions on extradition, prosecution and cooperation (arts. 8 and 9) of the EU Convention on the fight against corruption are based largely on those of the EU Convention on PFI	No specific provisions	No specific mechanism for the monitoring of the Convention is provided for. However, it should be noted that the European Court of Justice also has a role to play and has interpretative competence and may pass judgement in cases of disputes regarding the Convention
Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union on corruption in the private sector ("EU Joint Action")	Active and passive corruption in the private sector	Same provisions as in the EU Convention on PFI. See article 4 of the Joint Action. In connection with legal persons, the EU Joint Action (art. 6) contains the same provisions as the Second Protocol to the EU Convention on PFI	The Joint Action foresees that any member State that, under its law, does not extradite its own nationals shall take the necessary measures to establish its jurisdiction with regard to active and passive corruption as defined in the Joint Action, when committed by its own nationals outside its territory (art. 7, para. 4)	No specific provisions	No provisions in this connection
Inter-American Convention against Corruption ("OAS Convention")	1. Corruption of domestic public officials. 2. Bribery of foreign public officials in connection with economic or commercial transactions; 3. Illicit enrichment	No specific provisions	*Extradition*: Yes. See article XIII. *Mutual legal assistance*: Yes. The Convention provides that States parties, in accordance with their domestic laws and applicable treaties, shall afford one another the widest measure of mutual assistance. States parties are also called upon to provide each other with the widest measure of mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption (art. XIV)	Among the different anti-corruption legal instruments analysed here, the OAS Convention is the most detailed as concerns the provisions aimed at the prevention of corruption. On the basis of its article III, States parties agree to consider the applicability of a set of different measures to prevent acts of corruption	The establishment of a monitoring mechanism is currently under discussion

Title	*Offences covered*	*Measures and sanctions*	*International cooperation*	*Prevention*	*Monitoring mechanism*
Convention on Combating Bribery of Foreign Officials in International Business Transactions ("OECD Convention")	Bribery of foreign public officials in international business transactions.	The Convention calls for criminal penalties that are effective, proportionate and dissuasive, applicable to natural and legal persons alike, for the bribery of foreign public officials. The range of penalties shall be comparable to that applicable to the bribery of the State party's own public officials and shall, in the case of natural persons, include deprivation of liberty sufficient to enable effective mutual legal assistance and extradition (art. 3).	*Mutual legal assistance*: Yes. States Parties to the OECD Convention are committed to providing mutual legal assistance, which cannot be declined for criminal matters within the scope of the Convention on the ground of bank secrecy (art. 9). *Extradition*: Yes. States parties are also committed to granting extradition in cases of bribery of a foreign public official (art. 10).	The Convention provides for the adoption of necessary measures to prohibit the establishment of off-the-books accounts and similar practices used to bribe foreign public officials or to hide such bribery (art. 8).	Within the framework of the OECD Working Group on Bribery in International Business Transactions and pursuant to the OECD Convention (art. 12) and the Revised Recommendation on Combating Bribery in International Business Transactions, a rigorous procedure for self- and mutual evaluation was adopted to ensure compliance with the Convention and implementation of the Revised Recommendation.

[a] Has not yet entered into force.

Annex II

Recommendations and other documents addressing corruption

Title	*Main focus of instrument*
International Code of Conduct for Public Officials (General Assembly resolution 51/59, annex)	Provides Member States with a tool to guide their efforts against corruption through a set of basic recommendations that national public officials should follow in the performance of their duties, dealing with: (a) The general principles that should guide public officials in the performance of their duties; (b) Conflict of interest and disqualification; (c) Disclosure of personal assets by public officials; (d) Acceptance of gifts or other favours; (e) The handling of confidential information; (f) The political activity of public officials.
United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191, annex)	Contains a set of measures that each country could implement at the national level to fight against corruption and bribery in international commercial transactions: (a) To adopt or enforce laws prohibiting bribery in international commercial transactions; (b) To encourage the development of business codes, standards or best practices; (c) To examine establishing illicit enrichment by public officials or elected representatives as an offence; (d) To ensure that bank secrecy provisions do not impede or hinder criminal investigations.
Conclusions and recommendations of the Expert Group Meeting on Corruption and its Financial Channels (Paris, 30 March-1 April 1999) (E/CN.15/1999/10)	The Expert Group Meeting identified a set of measures to improve international cooperation in combating corruption and the detection of financial flows related to corruption and made a series of recommendations to be taken both at the international and the national levels.

Title	*Main focus of instrument*
Action against corruption (General Assembly resolution 54/128)	Member States address the need to fight corruption focusing mainly on two aspects: (a) Ensuring the adequacy of national legal systems in terms of guarding against corruption and providing for forfeiture of the proceeds of corruption; (b) Developing a global strategy to strengthen international cooperation aimed at the prevention and punishment of corruption, including the links of corruption with organized crime and money-laundering.
Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders:[a] (a) Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century; (b) Report of the workshop on combating corruption.	By adopting the Vienna Declaration, Member States committed themselves to take enhanced international action against corruption, building on the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, the International Code of Conduct for Public Officials, relevant regional conventions and regional and global forums. The workshop on combating corruption focused mainly on what kind of measures could work effectively against corruption.
Twenty Guiding Principles for the Fight against Corruption (In its resolution (97) 24 of 6 November 1997, the Committee of Ministers of the Council of Europe agreed to adopt the Twenty Guiding Principles for the Fight against Corruption, developed by the Multidisciplinary Group on Corruption.)	These principles represent the fundamental directives that member States are called upon to implement in their efforts against corruption both at the national and the international levels and include different elements such as: (a) Raising public awareness and promoting ethical behaviour; (b) Ensuring coordinated criminalization of national and international corruption; (c) Guaranteeing the appropriate independence and autonomy of those in charge of the prevention, investigation, prosecution and adjudication of corruption offences; (d) Taking appropriate measures for the seizure and deprivation of the proceeds of corruption offences; (e) Limiting immunity from investigation, prosecution or adjudication of corruption offences.

Title	*Main focus of instrument*
Model code of conduct for public officials (On 11 May 2000, the Committee of Ministers of the Council of Europe adopted a recommendation on codes of conduct for public officials, which includes, in the appendix, the model code of conduct for public officials.)	The model code comprises three objectives: to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to tell the public what it is entitled to expect from its public officials.
Revised Recommendation on Combating Bribery in International Business Transactions (The Revised Recommendation was adopted by the Council of the Organization for Economic Cooperation and Development on 23 May 1997.)	The Revised Recommendation is the result of analytic work on anti-corruption measures and commitments to combat bribery in international business transactions and invites member countries to take effective measures to deter, prevent and combat international bribery in a number of areas.
Basel Committee on Banking Security: (a) "Prevention of criminal use of the banking system for the purpose of money-laundering" (1998); (b) "Core principles for effective banking supervision" (1997); (c) "Core principles methodology" (1999).	The Committee has issued guidance on money-laundering and "know-your-customer" practices for banks. The "Prevention of criminal use of the banking system for the purpose of money-laundering" outlines the basic ethical principles and encourages banks to put in place effective procedures to identify customers, refuse suspicious transactions and cooperate with law enforcement agencies. The "Core principles for effective banking supervision" state that banks should have adequate policies, practices and procedures in place, including strict know-your-customer rules. The "Core principles methodology" elaborates upon the 1977 "Core principles" by listing a number of essential and additional criteria.
Forty Recommendations (In 1990, the Financial Action Task Force on Money Laundering developed the Forty Recommendations, which were revised in 1996.)	The Forty Recommendations set out the basic framework for anti-money-laundering efforts and cover the criminal justice system and law enforcement, the financial system and its regulation and international cooperation.

Title	*Main focus of instrument*
Twenty-five principles to combat corruption (On 23 February 1999, representatives of a number of African countries met in Washington, D.C., under the auspices of the Global Coalition for Africa and co-sponsored by the Government of the United States of America, to discuss collaborative frameworks to address corruption and agreed on 25 principles to combat corruption.)	The principles are a concerted and collaborative effort to combat corrupt practices and provide a framework for collaboration among countries as well as for national action. Governments are, inter alia, called upon: (a) To demonstrate the leadership and political will to combat and eradicate corruption in all sectors of government and society by improving governance and economic management and by striving to create a climate that promotes transparency, accountability and integrity in public as well as private endeavours; (b) To enact and enforce criminal and civil laws that provide for the recovery, seizure, forfeiture or confiscation of property and other assets acquired through corruption; (c) To adopt cooperative arrangements at the regional and/or subregional levels that provide for the mutual exchange of ideas, information, best practices, intelligence and experiences. The principles also advocate the control of corruption in the private sector.
Guiding principles adopted by the first Global Forum on Fighting Corruption (Washington, D.C., 24-26 February 1999)	The scope of the Global Forum on Fighting Corruption was to strengthen efforts to control corruption and secure public integrity among government officials. The principles are based on best practices shared during the conference and promote public trust in the integrity of officials within the public sector by preventing, detecting and prosecuting or sanctioning official corruption and unlawful, dishonest or unethical behaviour.

Title	*Main focus of instrument*
Forty recommendations to combat transnational organized crime (At the summit of the Group of Seven held in Halifax, Canada, in 1995, it was decided to establish a group of senior experts on transnational organized crime with the mandate to identify significant gaps and options for improved cooperation against transnational organized crime and to propose practical action to fill such gaps. In April 1996, the Senior Experts Group made 40 recommendations to combat transnational organized crime efficiently).	Designed: (a) To focus on practical, legal and operational issues that affect law enforcement; (b) To enhance law enforcement capabilities and cooperation between member States; (c) To suggest steps that all nations could take, on a multidisciplinary basis, to meet the global challenge of transnational organized crime. In particular, in recommendation 32, States are encouraged to adopt the necessary legislative and regulatory measures to combat corruption, establish standards of good governance and legitimate commercial and financial conduct and develop cooperation mechanisms to curb corrupt practices.

[a] See *Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000: report prepared by the Secretariat* (United Nations publication, Sales No. E.00.IV.8).